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In the Supreme Court of the United States

OCTOBER TERM, 1964

PETE AVGIKOS,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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Petitioner, Pete Avgikos, has based his petition for a Writ of Certiorari on three points to which we reply as follows:

1.

Petitioner claims that an extradition may be based only on an indictment or an affidavit made before a Magistrate and that no such documents are present in this proceeding.

It is true that under the Federal Statute (18 USCA § 3182) extradition is provided for only when the requisition is accompanied by either an indictment or an affidavit made before a magistrate but Louisiana, as well as the majority of the other states, have also provided that extradition may also be based upon a

Bill of Information. LSA 15:160 states that the requisition must be accompanied by a "indictment, *information* or affidavit." In this case the extradition is based on a Bill of Information and that is all that is required by the Louisiana Statute.

An extradition by the State of Arkansas based upon a Bill of Information was approved by the Louisiana Supreme Court in the case of *In re Chelette*, 238 La. 683, 116 So. 2d. 293 (1959).

In the case of *Ex Parte Peairs*, 162 Tex. Cr. 243, 283 S.W. 2d 755, appeal dismissed *Peairs v. State of Texas*, 76 S. Ct. 104, 350 U. S. 858, 110 L. Ed 762, which is discussed at length in petitioner's brief (at pages 9, 10, 11, 15). This same point was passed upon and the Texas Court approved and upheld an extradition based upon a Bill of Information which was in accordance with the provisions of the Uniform Criminal Extradition Act which had been adopted in Texas and 39 other states. In the Peairs case an appeal to the United States Supreme Court was dismissed "for want of a substantial federal question."

Petitioner has cited the case of *Henry v. McArthur*, 1950, 122 Colo. 474, 223 P. 2d. 621, in which the Colorado Court did not permit an extradition to the State of Arkansas which was based on a Bill of Information. We think that case can be distinguished on the grounds that the State of Colorado did not have a statute such as the Louisiana Statute, LSA 15:160, which permits extradition based upon a Bill of Information.

2.

Petitioner has argued that the Governor of the State of Louisiana did not have "probable cause" for the issuance of his Executive Warrant for the arrest of Avgikos.

LSA 15:160 sets forth the documents that the Louisiana Governor must have before him before he issues an Executive Warrant in an extradition case.

The cases of *State v. Fleming*, 225 La. 564, 73 So. 2d. 462 (1954) and *In re Chelette*, 238 La. 683, 116 So. 2d. 293 (1960) have liberally construed the requirements of LSA 15:160 and the *Fleming case* holds that it is not necessary for the victim or person wronged in the criminal action to sign the complaint.

> "The respondents have not favored us with a brief but we assume from statements in the record that the trial judge was of the opinion that the "complainant", as referred to in LSA-R.S.15:160, denotes the victim or person wronged in the criminal action pending in the demanding state. This conclusion is erroneous for the reason that it would be impossible to extradite a person charged with murder and prevent those upon whom the duty of the enforcement of the law rests from bringing to justice persons who had committed offenses. In the present case the complaint was made and sworn to by V. H. Seiveno, a detective of the California Police Department, which is a sufficient compliance with the statute."

3.

Petitioner contends that the trial court did not give him a "fair hearing" because it did not permit him to

file an affidavit denying that he was the person named in the extradition papers.

At the hearing the defendant, Pete Avgikos, was present and the court offered him the opportunity to take the witness stand himself or to present any other witnesses to testify as to his identity but no such evidence was offered. The defendant offered absolutely no evidence at all.

CONCLUSION

For the foregoing reasons, respondent submits that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE

I, Jack P. F. Gremillion, a member of the bar of the Supreme Court of the United States and Louisiana Attorney General, of counsel herein, hereby certify that a copy of the above and foregoing brief was served on Messrs.

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counsel for the petitioners, by depositing same in the United States Mail with sufficient postage affixed.

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